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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,873	07/02/2003	Luc Brandt	25295A	6284
22889	7590	09/20/2005	EXAMINER	
OWENS CORNING 2790 COLUMBUS ROAD GRANVILLE, OH 43023			SELLS, JAMES D	
			ART UNIT	PAPER NUMBER
			1734	
DATE MAILED: 09/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/613,873

Applicant(s)

BRANDT ET AL.

Examiner

James Sells

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 16-33, 35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 16-33, 35 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 9-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wolf et al (US Patent 5,926,954).

Wolf discloses a silencer and a method of making it. As shown in Figs. 1-8, a septum (applicant's claimed body of wool-type fibrous material) 38 is wound around a perforated tube 36 by shuttle 32. A texturized fiber yarn (applicant's claimed yarn wound around the body) 34 is then fed onto the tube over the septum. At col. 3, lines 49-53, Wolf discloses that the texturized yarn 34 may comprise e-glass, s-glass, or a mineral wool. At col. 1, lines 63-67, Wolf discloses that the septum may comprise e-glass, fiberglass or stainless steel wool.

As shown in Figs. 9-15, the wound silencer is inserted into canister 40. This wound silencer appears to conform to the shape of the canister in the manner claimed by the applicant. The system may include one or more baffles 78 separating first and second rolls 80 and 82.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-8, 16-33 and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf et al as described above in paragraph 2 in view of Brandt et al (US Patent 6,412,596).

Brandt discloses a muffler and a process for making it. As shown in the figures, muffler 10 comprises shell 12, partitions 14a-c with openings or perforations 14d, internal compartments 16a-d, and pipes 18, 20 and 22. See col. 4, lines 3-41. Nozzle 30 is inserted into fill openings 18b to fill compartment 16a with fibrous material 24.

Vacuum adapter 40, coupled to vacuum source 42 via hose 44 is inserted into the end portion 20a of pipe 20. See col. 4, line 66 through col. 5, line 24.

It would have been obvious to one having ordinary skill in the art to employ perforated partitions and fiber introduction system, as taught by Brandt, in the silencer and method of Wolf described above in order to produce a muffler with multiple sound dampening cavities which facilitates sound dampening.

Regarding claims 5-8, it is the examiner's position that the specific materials claimed by the applicant are within the purview of one having ordinary skill in the art and would have been obvious to employ in the above system as a matter of design choice based on desired physical properties of the materials.

Regarding claims 16-33 it is the examiner's position that the shaped tool as well as the cutting, welding and affixing steps are well known and conventional in the art and would have been obvious to employ in the method of Wolf as a matter of design choice in order to facilitate manufacture of the silencer.

### ***Response to Arguments***

5. Applicant's arguments filed June 30, 2005 have been fully considered but they are not persuasive.

Applicant argues the reference of Wolf et al does not disclose a muffler insert having a body of wool-type fibrous material that conforms to the shape of a compartment in a tool. The examiner does not agree. As stated above, Wolf discloses a septum (applicant's claimed body of wool-type fibrous material) 38 with a texturized fiber yarn (applicant's claimed yarn wound around the body) 34 forming a wound silencer. This wound silencer appears to conform to the shape of the canister in the manner claimed by the applicant. Therefore the wound silencer conforms to the shape of a compartment in a tool in the manner claimed by the applicant. Thus, applicant's argument is believed to be incorrect in this instance.

Applicant argues that since Wolf et al discloses an improvement over conventional mufflers, it teaches away from a combination of the two references. The examiner does not agree. Just because a reference may be an improvement in the art does not preclude combining its teachings with the teachings of other patents. Therefore, the applicant's argument is believed to be incorrect in this instance.

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In response to applicant's argument that there is no suggestion or motivation to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as stated above, it would have been obvious to one having ordinary skill in the art to employ perforated partitions and fiber introduction system, as taught by Brandt, in the silencer and method of Wolf described above in order to produce a muffler with multiple sound dampening cavities which facilitates sound dampening.

#### ***Telephone/Fax***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sells whose telephone number is (571) 272-1237. The examiner can normally be reached on Monday-Friday between 9:30 AM and 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached at (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

A handwritten signature in black ink, appearing to read 'J. Sells', is written over a horizontal line.

**JAMES SELLS  
PRIMARY EXAMINER  
TECH. CENTER 1700**